IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 13TH JUNE 2007 / 23RD JYAISHTA 1929

WP(C).No. 30258 of 2003(B)

PETITIONER:

JOY ALUKKAS TRADERS (INDIA) PVT. LTD.,
ERNAKULAM, REP. BY MANAGING DIRECTOR, JOY ALUKKA,
ALUKKAS JEWELLERY, ANGAMALY.

BY ADV. SRI.BABU JOSEPH KURUVATHAZHA

RESPONDENTS:

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1. SHERISTADAR,
MUNSIFF'S COURT, ALUVA.

2. THOMAS, S/O. PAULO,
AGED 54 YEARS, MANGALI HOUSE, CHENGAMANAD,
ANGAMALY, ERNAKULAM DISTRICT.

3. XAVIER, S/O. JOSEPH,
AGED 40 YEARS, NJALIYATH HOUSE, MOOKKANNOOR,
ANGAMALY, ERNAKULAM DISTRICT.

4. SHIB VARGHESE, S/O. VARKEY PILLAI,
AGED 41 YEARS, KAIPARAMBATT HOUSE, ANGAMALY,
ERNAKULAM DISTRICT.

5. BHAKTHAVALSALAM, S/O. SUNDARAN,
AGED 45 YEARS, THERUVILPARAMBIL, THURAVOOR,
ANGAMALY, ERNAKULAM DISTRICT.

BY ADV. SRI.SAIBY JOSE KIDANGOOR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC : 30258 OF 2003

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE COMPROMISE DECREE AND COMPROMISE PETITION DT.11.4.03 IN OS NO.472 OF 2002 FILED BY THE RESPONDENTS 2 TO 5.

EXT.P2 : TRUE COPY OF THE OBJECTIONS FILED BY THE PETITIONER IN EP NO.113 OF 2003 BEFORE THE LEARNED MUNSIFF'S COURT, ALUVA.

EXT.P2(A) : TRUE COPY OF THE AFFIDAVIT FILED BY THE PETITIONER FOR RECALLING THE WARRANT DT.28.8.03.

EXT.P2(B) : TRUE COPY OF THE EA NO.248 OF 2003 DT.28.8.2003.

EXT.P3 : TRUE COPY OF THE ORDER DT.20.9.03 ISSUED FROM THE LEARNED COURT BELOW IN EP NO.113 OF 2003 IN OS NO.472 OF 2002.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 30258 OF 2003

Dated this the 13th day of June, 2007

JUDGMENT

For execution of compromise decree, Ext.P1, petition for execution was filed by respondents seeking recovery of a sum of Rs.49,000/- allegedly due to the respondent by way of cost and Ext.P3 order of arrest was issued by the court below against the Managing Director of the petitioner company which was the first judgment debtor in the decree. Drawing my attention to Rule 196 of the Civil Rules of Practice, Sri.Babu.Joseph Kuruvathazha, learned counsel for the petitioners submitted that fees receipt cum certificate was not filed before the trial court by the respondent on time and this is why the decree allows recovery of only Rs.575/- as cost. Mr.Saiby Jose Kidangoor, learned counsel for the respondent supports Ext.P3 order of arrest and also the claim for recovery of the amount on the basis of Clause 9 of Ext.P1 compromise petition which has been incorporated as part of the decree. Ext.P1 certainly shows that the petitioner herein (the first defendant) has undertaken to pay the expenses incurred by the respondent-decree holder on account of court fee and incidental charges and also the advocate fee. But the question is whether by virtue of Ext.P1 the respondent is entitled to recover more than the

advocate fee for which fees receipt was filed in terms of Rule 196 of the Civil Rules of Practice. Going strictly by Rule 196, the above question will have to be answered in favour of the petitioner and against the respondent. However, it should not be forgotten that all the terms of compromise petition have been incorporated in the compromise decree, Ext.P1 and therefore the petitioner cannot shirk the obligation of paying the advocate fees lawfully payable by the respondent even in the absence of a previous contract between the party and the advocate. In the matter of the suit considerations of justice also justifies is such an interpretation. It is not disputed before me that the maximum amount of fees,as per rules relating to payment of advocate fee in the present suit could have been only about Rs.5,000/- and that the maximum amount which could have been expended on account of court fee, commission batta and other incidental charges was another Rs.5,000/-. Thus Rs.10,000/- in my opinion is the maximum amount which could have been recovered by filing advocate fee receipt on time. There is yet another reason for setting aside Ext.P3 order. Order of arrest is not preceded by an enquiry as envisaged by Order XXI Rule 40 CPC. On both these reasons, I set aside Ext.P3 and allow the writ petition but only on condition that the respondent will be entitled to draw Rs.10,000/-

from out of the amount deposited by the petitioner in response to this Court's interim order by making application for cheque in that regard. It is open to the petitioner to withdraw the balance amount under deposit, valuable movables belonging to the petitioner have been taken possession of by the amin. If it so, these movables will be returned to the petitioner on application.

It is clarified that receipt of Rs.10,000/- as directed herein will be in full and final settlement of all the claims of the respondent in the Execution Petition.

Allowed as above. No costs.

PIUS C. KURIAKOSE, JUDGE

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